

#### **Understanding TAS Law & Rules**

Texas Department of Licensing and Regulation

#### Course Objective: Texas Accessibility Law & Rules





The Umbrella Agency

#### The Umbrella Agency

The Texas Department of Licensing and Regulation (TDLR) is the umbrella licensing agency that currently oversees forty businesses, trades, industries, and occupations.



They include the following:

#### tdlr The Umbrella Agency

Air Conditioning/ Refrigeration

**Architectural Barriers** 

**Athletic Trainers** 

**Auctioneers** 

Barbering

Behavior Analysts

Boiler Safety

Code Enforcement

Combative Sports

Cosmetologists

Dietitians

Driver Education/Safety

Dyslexia Therapy

Electricians

Elevator/ Escalator Safety

For Profit Legal Services

Hearing Instrument Fitters

& Dispensers

Industrialized Housing and

**Buildings** 

Laser Hair Removal

Licensed Breeders

Licensed Court Interpreters

Massage Therapy

Midwives

Mold Assessors/Remediators

Motor Fuel Metering and Quality

Offender Education Programs

Orthotists/Prosthetists

Podiatry

Polygraph Examiners

Professional Employer Organizations

Property Tax Consultants

Property Tax Professionals

Responsible Pet Owners

Sanitarians

Service Contract Providers

Speech-Language Pathologists

& Audiologists

Tow Trucks, Operators & VSFs

Transportation Network Companies

**Used Auto Parts Recyclers** 

Water Well Drillers and

Pump Installers

Weather Modification



#### The Umbrella Agency



**New Programs Added to TDLR** 





#### tdlr The Umbrella Agency

#### New Programs Added to TDLR **Health Professions**

Motor Fuel Metering and Quality

Transportation Network Companies

Dyslexia Therapists and Practitioners

Hearing Instrument Fitters and Dispensers

**Midwives** 

Orthotists and Prosthetists

Speech-Language Pathologists and Audiologists



#### The Umbrella Agency cont'd

#### Second Phase of New Programs Added to TDLR

- Code Enforcement Officers
- Laser Hair Removal
- Massage Therapy
- Mold Assessors and Remediators
- Offender Education Providers
- Sanitarians



#### TDLR's Primary Responsibilities

#### The agency is primarily responsible for:

- issuing licenses,
- investigating complaints,
- establishing rules and standards,
- conducting plan reviews and inspections, &
- enforcing statute and rule requirements.



#### **Architectural Barriers Program**

#### Regulatory Program Management Division

The Architectural Barriers Program is part of the TDLR Compliance Division.

TDLR and AB staff administer compliance with the following:

**Act** – Texas Government Code, Chapter 469, Elimination of Architectural Barriers (the Texas Architectural Barriers Act).



#### Architectural Barriers Program

Regulatory Program Management Division cont'd

**Rules** – Title16, Texas Administrative Code, Chapter 68, the administrative rules of the Texas Department of Licensing and Regulation promulgated pursuant to the Act.

**TAS** – The 2012 Texas Accessibility Standards which were adopted by the Commission and became effective March 15, 2012.



## Architectural Barriers Program Organization

#### **Audit/Oversight**





#### Communication and Education

- Presentations and Seminars
- Educational Materials
- Technical Memoranda

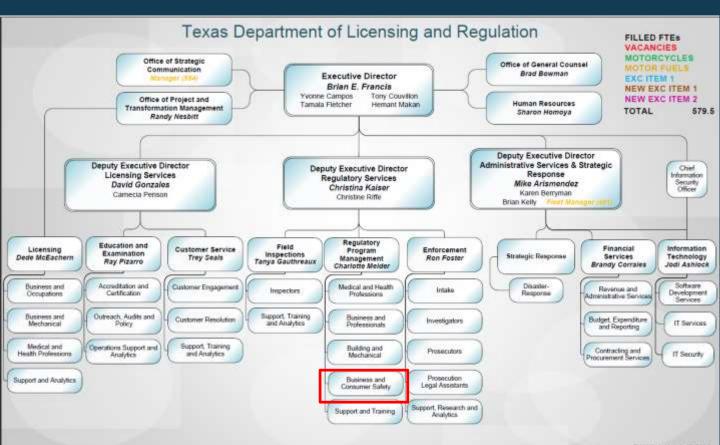


#### Communication and Education

- Inspection Notices
- Project StatusUpdates

Project File Transfers

#### TDLR Organizational Chart



#### Regulatory Program Management Division

- Director
  David Gonzales
  - Business and Consumer Safety Charlotte Melder, Manager
    - Architectural Barriers
      Marsha Godeaux, Team Lead
      Norman Kieke, Team Lead

#### RPM Divisions

#### LICENSING DIVISION

- Project Registration
- Registered Accessibility Specialist (RAS) Registration

#### **EDUCATION & EXAMINATION DIVISION**

 Oversight of Examinations and Continuing Education

#### **ENFORCEMENT DIVISION**

- Complaints, Investigations & Prosecution
- Administrative Sanctions and Penalties

# 469.053 Advisory Committee Review and Comment on Rules

(a) The presiding officer of the commission, with the commission's approval, shall appoint an advisory committee for the architectural barriers program.

The committee shall consist of building professionals and persons with disabilities who are familiar with architectural barrier problems and solutions.

#### 469.053 cont'd

The committee shall consist of at least eight members. A majority of the members of the committee must be persons with disabilities.



#### 469.053, cont'd

(b) A committee member serves at the will of the presiding officer of the commission.

(c) A committee member may not receive compensation for service on the committee but is entitled to reimbursement for actual and necessary expenses incurred in performing functions as a member.

# Rule 68.65: Advisory Committee

(a) The Elimination of Architectural
Barriers Advisory Committee shall
review rules relating to the Elimination
of Architectural Barriers program and
recommend changes to the
Commission.

#### Rule 68.65:

#### Advisory Committee

(b) The Elimination of Architectural Barriers
Advisory Committee may review Technical
Memoranda relating to the Elimination of
Architectural Barriers program and
recommend changes.



### Rule 68.100 Technical Standards & Technical Memoranda

a) The Texas Commission of Licensing and Regulation adopts by reference the 2012 Edition of the Texas Accessibility Standards (TAS), effective March 15, 2012.

Technical Standards &

#### Memoranda

(b) The Texas Commission of Licensing and Regulation may publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee. Now a brief comparison

#### **Americans With Disabilities Act**













#### Afficiatio with Disabilities Act.

#### ADA

#### Federal Accessibility Law



Administered and entorced by the U.S. Department of Justice (DOJ).

- Civil rights law intended to prevent discrimination against people with disabilities in employment, public services, commercial facilities, public accommodations, and transportation & telecommunication services.
- Enforcement is driven by private lawsuits and complaints from people with disabilities.

#### Afficients with Disabilities Act.

#### ADA

#### Federal Accessibility Law

- Generally, there is <u>no requirement for plan review</u>, <u>or inspection</u>; although federally-funded projects may require review or inspection prior to release of federal funds.
- Applies to <u>existing</u> as well as newly constructed, renovated, modified, or altered buildings including:
  - public and government entities (Title II);
  - private entities:
- public accommodations (Title III); and
- > commercial facilities (Title III).

#### ATTOTOGIS WITH DISUBILITOS ACT.

#### ADA

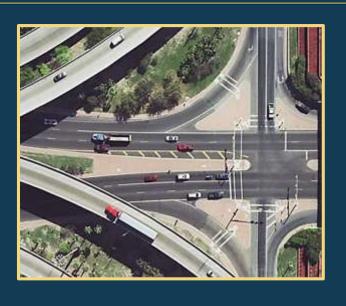
#### Federal Accessibility Law

Requires public entities to operate each service, program, or activity, so that, when viewed in its entirety, they are accessible to and usable by individuals with disabilities.



#### For Example

Pedestrian networks of sidewalks, curb ramps, street crossings, and shared use paths are considered both --

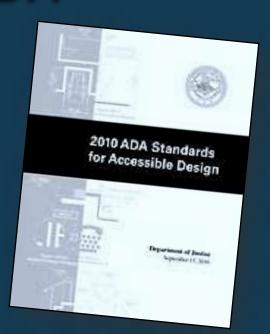


- "programs" (i.e. services delivered by a public entity to its citizens), and
- "facilities" (i.e. pedestrian elements that are instrumental in providing the services).

## Standards

#### **2010 ADA**

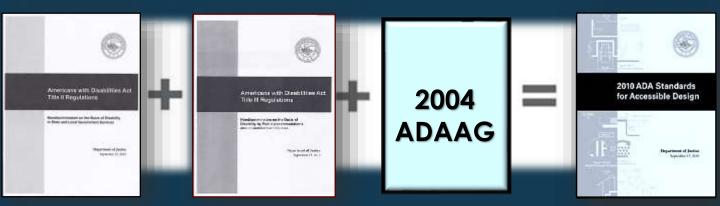
DOJ replaced the 1991 ADA **Accessibility** Guidelines (ADAAG) with the 2010 ADA Standards for Accessible Design (2010 ADA) effective March 15, 2012.



www.ada.gov/2010ADAstandards index.htm

#### 2010 ADA

The 2010 ADA is comprised of the revised Code of Federal Regulations (CFR) for Title II (State and Local Governments) and Title III (Public Accommodations and Commercial Facilities) and the 2004 ADAAG.







# Texas Government Code: Chapter 469

#### rexus governmem code,

#### Chapter 469

#### Texas Accessibility Act



Administered and enforced by the Texas Department of Licensing and Regulation.

- Construction law that is applicable only when a subject building or facility is newly constructed, renovated, or altered except in the case of state leases.
- Enforcement is driven by consumer, industry, and Department complaints.

# Chapter 469 Texas Accessibility Act

#### Cont....

Requires project registration with the state, plan review, and inspection of subject facilities.

Accessibility and enforcement compliance is pursued through process.

# History: Texas Architectural Barriers Act

- The original act was adopted in 1969 and codified as Article 678(g).
- The State Building Commission was the enforcing agency in 1969
- In 1991, the program was transferred to TDLR and the Act was codified as Texas Civil Statue, Article 9102.





#### **Statistics**

Based on Census figures, it is estimated that about 11.9% of Americans ages 15 and older have an ambulatory disability...



...this is about 35 million people.

In addition, based on government figures, 3.4 million veterans have some type of serviceconnected disability.



Census figures also project that 1 in every 5 Americans will be older than 65 by 2030.

That is **76.4**million people
with disabilities





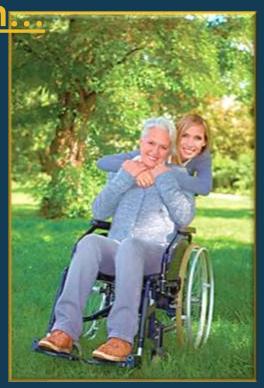
What Does All This Mean?

# It means we all have something in common...

we can expect to continue aging and

we have a potential need for accessibility in the future if we want to continue to be independent.

"Aging" is actually one of the populations specifically addressed in Chapter 469.





Unfortunately, the symbol of accessibility leads people to believe that accessibility laws and standards only relate to persons with mobility impairments.

However, the population to which Chapter 469 and TAS relates is **much broader** and is identified in the following provisions of Chapter 469.001.

# Chapter 469.001, Contd.



(b) This chapter relates to:

Nonambulatory & Semi-ambulatory Disabilities



- Aisle seats with folding armrests
- Ambulatory and wheelchair accessible toilet compartments

# This chapter relates to: Sight Disabilities

- Detectable warnings
- Protruding object requirements
- Signs with braille and contrast



# This chapter relates to: Hearing Disabilities

- Assistive listening devices
- TTY's and telephones with volume control
- ATM's with hearing accommodations
- Audible and visual alarms





- Grab bars
- Handrails and handrail extensions
- Door maneuvering clearances





# This chapter relates to: Aging

# Examples of Application of TAS:

All provisions of TAS assist in achieving an environment for "aging in place" so that we can continue to live in our own homes and community safely, independently, and comfortably, regardless of our age or ability level.



# Public Policy

The public policy of TDLR addressed in the following provisions of Chapter 469 identify why this Act is so important to the population of persons identified in Chapter 469.001.



# Chapter 469.001(c) Scope of Chapter; Public Policy

(C) This chapter is intended to further the policy of this state (which is) to encourage and promote the rehabilitation of persons with disabilities and...



# Chapter 469.001(c), Contd...

...to eliminate, to the extent possible, unnecessary barriers encountered by persons with disabilities whose ability to...

...engage in gainful occupations or to achieve maximum personal independence is needlessly restricted.



#### These unnecessary barriers are...





In summary,
everyone, over
the course of their
lifetime, benefits in
some way from
accessible design

The buildings and facilities subject to compliance with the Texas Accessibility Standards (TAS) are addressed in Chapter 469.003.

# Adoption of Standards



# **Obligation to Adopt Standards**

TDLR was required by the following provisions of Chapter 469.052 to adopt new standards since DOJ had adopted new standards:



# Chapter 469.052 Standards and Specifications: Rulemaking

a) The commission shall adopt standards, specifications, and other rules under this chapter that are consistent with standards, specifications, and other rules adopted under federal law.

# Chapter 469.052, cont'd

b) The standards and specifications adopted by the commission under this chapter shall be consistent in effect with the standards and specifications adopted by the American National Standards Institute or that entity's federally recognized successor in function.





#### **Standards**

TDLR replaced the 1994 TAS with the 2012 edition effective March 15, 2012 which is intended to be consistent with the 2010 ADA except as noted in italics.



www.tdlr.texas.gov/ab/abt
as.htm

### **2012 TAS**

The 2010 ADA consists of both the CFR and 2004 ADAAG so TDLR needed to incorporate some of the provisions of the CFR for Title II and III into the 2012 TAS in order to be consistent.



#### Italics

The CFR requirements are actually the bulk of the *italicized text* in the 2012 TAS.

The following is an example.

# 2010 STANDARDS FOR PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES: TITLE III

Public accommodations and commercial facilities must follow the requirements of the 2010 Standards, including both the Title III regulations at 28 CFR part 36, subpart D; and the 2004 ADAAG at 36 CFR part 1191, appendices B and D.

#### Contents

(28 CFR part 36, subpart D — New Construction and Alterations

#### 36.401 New construction

- (a) (b) Commercial facilities located in private residences
- (c) Exception for structural impracticability
- (d) Elevator exemption

# This exception was added to TAS 203.1 (General) and since it is an addition, it is all in italics.

**203.1 General.** Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by 203.

**EXCEPTION:** In new construction, full compliance with the requirements of these standards is not required where an entity can demonstrate that it is structurally impracticable to meet the requirements. Full compliance will be considered structurally impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

### **NOT** Included in the 2012 TAS

Some sections of the CFRs and 2010 ADA Standards were not incorporated into the 2012 TAS because they:

- > Conflict with requirements of Chapter 469;
- Are applicable only to the implementation of federal standards; and
- Are beyond the Department's authority and jurisdiction.

## Additions to the 2012 TAS

The following additional information was added to the 2012 TAS since it was necessary for the implementation of the standards:

- Identification of sections that require a variance;
- Clarification of references to the Attorney General as applicable to Texas; and
- Numbering of the definitions.

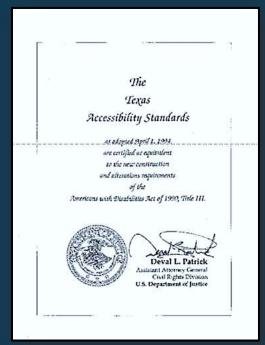
# 2012 TAS Compliance Dates

- Compliance with the 2012 TAS for new construction and alterations is based on:
- building permit date or
- date of start of physical construction if a building permit is <u>not</u> required.

It is not acceptable to apply both the 1994 and 2012 TAS to one EABPRJ project number – full compliance with either is required.

# **Equivalency Certification**

The 1994 TAS was certified as equivalent to the ADA, Title III - Public **Accommodations** and Commercial Facilities on September 23, 1996.



www.tdlr.texas.gov/ab/abtas.htm

The certification did not apply to

variances

# **Equivalency Re-Certification**

It is anticipated that a similar letter will be issued to TDLR by DOJ once they accept the 2012 TAS for equivalency re-certification.

The results are still pending at this time.



# Applicability of Standards



## **History:**

# Public Buildings and Facilities

The original 1969 Act was applicable only to public buildings and facilities.



# Chapter 469.003(a) Applicability of Standards

The standards adopted under this chapter apply to:

1. A building or facility used by the public that is constructed, renovated, or modified, in whole or in part, on or after January 1, 1970 using funds from the state or a county, municipality, or other political subdivision of the state.

# **Facility**

Public Building or Facility. A building or facility or portion of a building or facility designed, constructed, or altered by, on behalf of, or for the use of a public entity\* subject to the Texas Architectural Barriers Act, Chapter 469, Texas Government Code.

Public entity" is defined in the following provisions of the ADA, Title II, § 35.104

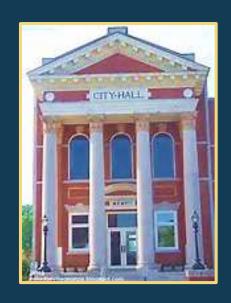
Definitions:

# Excerpt from Title II, § 35.104 Public Entities

(A) any State or local government;

Definition may be added to Rule 68.10.

(B) any department, agency, special purpose district, or other instrumentality of a State or States or local government.



# In Summary

Public buildings and facilities are those that are constructed or renovated with



# **Examples: Public Buildings**



Texas Governor's Mansion

# **State Capitol of Texas**



# **County Courthouse**



Public buildings and facilities are subject to the Act based on the following:

### Temporary Buildings and Facilities



### Chapter 469.003(a) Applicability of Standards

The standards adopted under this chapter apply to:

(2) a building or facility described by this subsection or Subsection (b) that is constructed on a temporary or emergency basis;



### State Leases



#### **History: State Leases**

In 1971, a statutory change to the Act by the 62nd Legislature added buildings and facilities leased by state agencies and added provision for plan reviews.

In 1997, the 75th Legislature required that state leases be inspected prior to occupancy.



<sup>\*</sup>Plan reviews and inspections will be discussed later.

#### **History: State Leases**

In 2001, the 77th Legislature deleted the stipulation that a building owner must apply for a variance prior to submitting a bid for a state lease or prior to award of a state lease contract.

At that time (2001), state leases with an annual lease payment of \$12,000 or less, including free space, were also exempted from <u>registration</u> requirements.

## Chapter 469.003(a) Applicability of Standards

The standards adopted under this chapter apply to:

(3) a building leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972.

#### Rule 68.20(c)

## Buildings and Facilities Subject to Compliance with TAS

(c) building or facility leased for use or occupied, in whole or in part, by the state under a lease or rental agreement entered into on or after January 1, 1972, is subject to the TAS except as modified under §68.101.

#### State Leases: Important

State leases are the only entity in which compliance with TAS is required even if there is <u>no</u> construction.



The definition of "state agency" and the requirements for state leases are addressed in the following provisions of the Act, Rules, and TAS:

#### Rule 68.101:

#### State Leases

a) State leased buildings or facilities with an annual lease expense in excess of \$12,000 shall be registered with the department by completing a State Lease Registration form and submitting it along with the applicable fee(s).

This requirement applies to <u>both</u> initial lease agreements and lease renewals.

#### Rule 68.10(28)

#### **Definition**

State Agency--A board, commission, department, office, or other agency of state government.





#### Rule 68.101, Contd...

For state leased buildings or facilities that are being constructed, renovated, or modified, an Elimination of Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation page shall also be completed.

#### Rule 68.101, Contd...

- (c) Buildings or facilities that are leased or occupied in whole or in part for use by the State, shall meet the following requirements of TAS:
- (1) New construction shall comply with TAS 201.1.

(2) Additions shall comply with TAS 202.2.

#### Rule 68.101 (c) (5), Contd.

In an existing building or facility, where alterations are not planned or the planned alterations will not affect an area containing a primary function, the following minimum requirements shall apply:

#### Rule 68.101, (5) Contd.

- a) If parking is required as part of the lease agreement or is provided to serve the leased area, accessible parking spaces shall comply with TAS 208 and 502.
- b) An accessible route from the parking area(s) shall comply with TAS 206 and 402.
- At least <u>one</u> entrance serving the lease space shall comply with TAS 206.4.5 and 404.

#### Rule 68.101, Contd.

(d) If toilet rooms or bathrooms are required by the lease agreement or are provided to serve the leased area, at least one set of men's and women's toilet rooms or bathrooms or at least one unisex toilet room or bathroom serving the leased area shall comply with TAS 213 and 603.

#### Rule 68.101, Contd.

shall comply with TAS 703. Toilet rooms or bathrooms serving the leased area which are not accessible shall be provided with signage complying with TAS 703.1, 703.2.4, 703.2.5, 703.6.2, and 703.7, indicating the location of the nearest accessible toilet room or bathroom within the facility.

#### Rule 68.101, Contd...

(f) If drinking tountains are required by the lease agreement, or are provided to serve the lease area, at least one fountain shall comply with TAS 602.

If <u>more than one</u> drinking fountain is provided, <u>at least 50%</u> shall comply with TAS 602.

#### Rule 68.101, Contd...

- (g) If public telephones are required by the lease agreement, or are provided to serve the leased area, at least one public telephone shall comply with TAS 704.
- (h) If an element or space of a lease is not specified in this subsection but is present in a state leasehold, that element or space shall comply with TAS 201.1.

## Registered Accessibility Specialists

RAS are required by the RAS Procedures to notify TDLR State Lease Coordinator by phone, fax, or e-mail when the project is a state lease or state lease renewal and obtain written authorization from TDLR to proceed prior to performing a plan review or inspection.



Ginna Harris State Lease Coordinator 512-539-5677

#### **Public versus Private**

**Public** -- We've now discussed public buildings and facilities which are those that constructed, renovated, or modified with public funds, including, state leases in which there is no construction.

**Private** -- Now we need to discuss private buildings and facilities which are defined in the following provisions of TAS.

#### **Facility**

A place of public accommodation or a commercial building or facility subject to the Texas Architectural Barriers Act, Chapter 469, Texas Government Code.



#### In Summary

Private buildings and facilities are those that are constructed or renovated with private funds.



We'll start with "public accommodations."

#### Public Accommodati ons Private Funds



#### Compliance with the Act

Compliance with the Act for these categories/types of buildings and facilities was initially applicable only to counties of 50,000 or more population.



The county population limit was reduced to 45,000 in 1981 and <u>removed completely</u> in 1991.

#### History, Contd: Private Funds

In 1991, public accommodations - as defined by the ADA - were added to the Act and compliance became effective 1992.



#### History, Contd: Private Funds

Provisions for fees, inspections, penalties, advisory committee, and contracting for services were also

added.\*



\*Fees, inspections, etc. will be discussed later in the presentation.

#### Chapter 469.003(a)

#### **Applicability of Standards**

The standards adopted under this chapter apply to:

(4) a privately funded building or facility that is defined as a "public" accommodation" by Section 301, Americans with Disabilities Act of 1990 (42) U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after January

#### **ADA** Definition

#### **Public Accommodation**

The (1991) ADA definition of "public accommodation" is incorporated into Rule 68.20(c). This Rule identifies the types of buildings and facilities that DOJ (and TDLR) considers to be public accommodations.



Transient Lodging

#### Excerpt from CFR 36.104

# (Definitions) Place of Public Accommodation

www.ada.gov/regs2010/titleIII 2010/titleIII 2010 withbold.htm

Place of public accommodation means a facility operated by a private entity whose operations affect commerce and fall within at least one of the following categories –

#### Rule 68.20(d)

(d) The following private buildings and facilities constructed, renovated, or modified on or after January 1, 1992 and defined as a "public accommodation" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181) and its subsequent amendments, are subject to the TAS:

(1) an inn, hotel, motel, or other place of lodging except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor;

(2) a restaurant, bar, or other establishment serving food or drinks;

(3) a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.

(4) an auditorium, convention center, lecture hall, or other place of public gathering;

(5) a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment;



(6) a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment;



- (7) a terminal, depot, or other station used for specified public transportation;
- (8) a park, zoo, amusement park, or other place of recreation;
- (9) a museum, library, gallery, or other place of public display or collection;



(10) a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education;



#### Rule 68.20(d) Cond....

- (11) a day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment; and
- (12) a gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.



#### **Accommodations**



Restaurant

#### **Examples:** Private School



**Private School** 

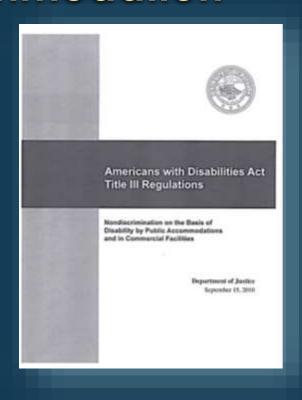
# Revised Definition: Public Accommodation



#### **Revised ADA Definition**

#### "Public Accommodation"

DOJ revised the ADA definition of in CFR 36.104 of the final rules published on September 15, 2010 for Title III (28 CFR part 36) of the ADA.



#### **Revised ADA Definition**

#### "Public Accommodation"

This revision to the definition means that timeshare and condominium properties that operate like hotels are now considered places of lodging, therefore, they are also considered public accommodations.



## Commercial Facilities Private Funds



#### **Commercial Facilities**

Commercial facilities typically are not open to the public but provide employment and a product or service. In many cases, they are both commercial facilities and public accommodations.



For example, a power plant is a commercial facility, however...

#### **Commercial Facilities**

...the building where you go to make utility payments is a public accommodation.



Both are subject to TAS although each building will have areas and spaces that are exempted by Rule 68.30 or TAS 203.

#### **Another Example**

A Walmart that operates as a sales and service establishment is a public accommodation, however...



#### **Another Example**

... the Walmart distribution center that is not open to the public is a commercial facility.



Commercial facilities are subject to Chapter 469 based on the following:

## Chapter 469.003(a) Applicability of Standards

The standards adopted under this chapter apply to:

(5) a privately funded building or facility that is defined as a "commercial facility" by Section 301, Americans with Disabilities Act of 1990 (42 U.S.C. Section 12181), and its subsequent amendments, and that is constructed, renovated, or modified on or after September 1, 1993.

#### Rule 68.30 Exemptions



#### Rule 68.30

#### **Exemptions**

Rule 68.30 identifies exemptions for the following:

- 1. Federal Property
- 2. Places Used Primarily for Religious Rituals
- 3. Van Accessible Parking at Garages Constructed Prior to April 1994
- 4. Residential Facilities

#### Federal Property



## Federal Funds and Federal Property

There are two different "federal" references in the Act and Rules:

Federal Funds: Chapter 469.003(b) Federal Property: Rule 68.30(1)

"Federal funds" is addressed in the following provisions of Chapter 469.003(b):

## Chapter 469.003(b) Applicability of Standards

To the extent there is not a conflict with federal law and it is not beyond the state's regulatory power, the standards adopted under this chapter apply to a building or facility constructed in this state or leased or rented for use by the state using federal money.



#### Section 504

- Section 504 applies to all employers and organizations that receive federal financial assistance from any Federal department or agency, including HUD.
- Therefore, since HUD requirements are beyond TDLR's regulatory power, section 233.2 of the 2012 TAS was amended to defer compliance to HUD.

#### 233.2 Residential Dwelling Units

Subject to HUD Section 504 Regulations

Where facilities with residential dwelling units are provided by entities subject to regulations issued by the U.S. Department of Housing and Urban Development (HUD) under Section 504 of the Rehabilitation Act of 1973, as amended, HUD regulations in lieu of complying with these standards issued under Texas Government Code, Chapter 469.

#### **Federal Property**

The second "federal" reference in the Act and Rules is applicable to "federal property."

Federal facilities are subject to their own (ABA) accessibility regulations.







The Chapter 469 exemption for federal property is addressed in Rule 68.30(1):

#### Federal Property

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) Federal Property. Buildings or facilities owned, operated, or leased by the federal government.

#### **Example:** Federal Property

The exemption in 68.30(1) would apply to any post office; even if it was located in a public accommodation such as a shopping center.



#### Places Used Primarily for Religious Rituals



#### **Chapter 469.003**

#### Applicability of Standards

(c) The standards adopted under this chapter do not apply to a place used primarily for religious rituals within a building or facility of a religious



#### Rule 68.10(25)

#### **Definitions**

Religious Organization —An organization that qualifies as a religious organization as provided in Texas Tax Code, Chapter 11, §11.20(c).

### §11.20(c) Texas Tax Code



....qualified as a charitable organization under Section 501(c)(3), Internal Revenue Code of 1954.

#### Rule 68.20(f)

(e) Buildings or facilities of a religious organization are subject to the Act except for areas exempted under §68.30.

## Rule 68.30(2) Exemptions

Places Used Primarily for Religious Rituals.

An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant.

To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review.

#### Rule 68.30(2)

#### Exemptions

This exemption <u>does not apply</u> to common use areas.

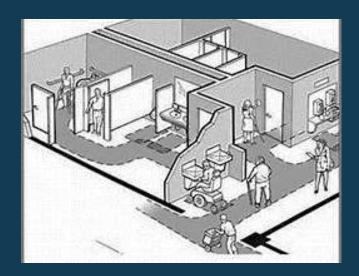
parking facilities

- accessible routes
- walkways, hallways
   toilet facilities
- entrances

- public telephones
- drinking fountains
- exits

#### 106.5.21 Common Use

Interior or exterior circulation paths, rooms, spaces, or elements that are not for public use and are made available for the shared use of two or more people.



## Example: Wedding Venues Not a Religious Organization

Owners that provide wedding venues such as chapels but are not qualified religious organizations as determined by Texas Tax Code ...



...do not meet the exemption criteria of the Rules or Act for religious organizations or areas of religious ritual.

#### **Funeral Homes**

It's also unlikely that a funeral home is a qualified religious organization.



Just because this looks like an area of religious ritual doesn't mean that the Exception applies.

#### Van Accessible Parking: Garages Constructed Prior to 1994



#### Rule 68.30(3)

#### Exemptions

Constructed Prior to April 1994. Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage.

#### Rule 68.30(3), Contd.

If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility.



## Residential Facilities



### Chapter 469.003(d)

## Applicability of Standards

If any portion of a building described by Subsection (a)(1) is occupied solely for residential use and the remaining occupied portion of the building is occupied for nonresidential use...



#### 469.003(d), Contd.



... the executive director shall consider only the nonresidential portion of the building in determining whether the building complies with the standards and specifications adopted under this chapter.

#### Rule 68.30(4)

### Exemptions



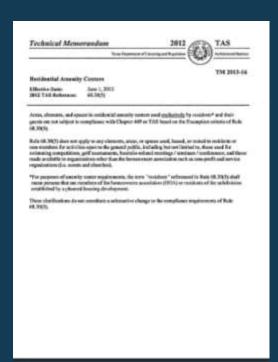
#### Residential Facilities.

Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings...

...used exclusively by residents and their guests.

#### Technical Memo 2013-16

#### Residential Amenity Centers



Technical
Memorandum 2013-16
was issued on June 1,
2013 to address the
application of the
exception for
residential amenity
centers.

The following information is provided in the TM:

#### Excerpt from TM 2013-16:



Areas, elements, and spaces in residential amenity centers used residents and their guests are not subject to compliance with Chapter 469 or TAS based on the Exemption criteria of Rule 68.30(5).

#### Rule 68.30(4)





apply to any elements, areas, or spaces used, leased, or rented to residents or non-members for activities open to the general public, including but not limited to, those used for swimming competitions, golf tournaments, businessrelated meetings / seminars / conferences...

#### Rule 68.30(4)

...and those made available to organizations other than the homeowners association such as non-profit and service organizations (i.e. scouts and churches).



### **Apply**

The exemption does not apply to the following since compliance with the residential requirements of 233 and 809 is required by TAS:

- Crew quarters: emergency response personnel
   TM 2012-02
- Social service establishments
   224.1 Exception 2\*

Graduate student/ faculty housing
 224.6 Exception 3

\*\*Exceptions are addressed in the following slides

#### 224.1 General

#### Exception 2

Group homes, halfway houses, shelters, or similar social service establishments that provide either temporary sleeping accommodations or residential dwelling units that are subject to these standards...



...shall comply with the provisions applicable to residential facilities, including but not limited to, the provisions in sections 233 and 809.

#### Technical Memo 2012-08

#### Private Clubs



In accordance with TAS 201.1, the requirement of the Team Accordance for the to explice to all areas of a facility solves exempted, or where conjung limin the maraber of multiple clossocial required to be consulted.

There are no exceptions in Texas Government Code, Chapter 469 (the Act) for private study or in Texas Administrative Rate, Chapter 68 (the Rotes).

In addition, TAS centams so Exceptions that are specific to private clubs our does the acoping limit the number of multiple elements required to be accountly in private clubs.

Private clubs, therefore, must comply with the Act, Rules, and TAS as administered by the Texas Department of Licensing and Regulation. Technical
Memorandum 201208 was issued on
January 22, 2013 to
clarify that private
clubs are not exempt.

The following information is provided in the TM:

#### Excerpt from TM 2012-08:

In accordance with TAS 201.1, the requirements of the Texas Accessibility Standards are to be applied to all areas of a facility unless exempted, or where scoping limits the number of multiple elements required to be accessible.

There are no exemptions in Texas Government Code, Chapter 469 (the Act) for private clubs or in Texas Administrative Rule, Chapter 68 (the Rules).



**203.1 General.** Sites, buildings, facilities, and elements are exempt from these requirements to the extent specified by 203.

Exception: In new construction, full compliance is not required where it can be demonstrated that it is **structurally impracticable** ...due to the unique characteristics of terrain.

Structural impracticality is determined by the Department through the variance procedure.

#### 203.2 Construction Sites:

Structures and sites directly associated with construction shall not be required to comply with TAS or be on an accessible route, including scaffolding, bridging, materials hoists, materials storage, construction trailers, and portable toilet units used exclusively by construction personnel.

#### 203.3 Raised Areas.

Areas raised primarily for security, life safety, or fire safety, including but not limited to observation or lookout galleries, prison guard towers, fire towers or life guard stands shall not be required to comply with TAS or be on an accessible route.

**203.4 Limited Access Spaces.** Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways shall not be required ...

**203.5 Machinery Spaces.** Spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment shall not be required ...

Machinery spaces include elevator pits/pent-houses; mechanical, electrical or communications equipment rooms; piping/equipment catwalks; water/sewage treatment pump rooms; electric substations & transformer vaults; highway/tunnel utility facilities.

203.6 Single Occupant Structures. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, (e.g. toll booths), shall not be required ...

#### 203.7 Detention and Correctional Facilities.

Common use areas used only by inmates, detainees and security personnel and that do not serve holding/housing cells required to comply with 232, shall not be required ...

**203.8 Residential Facilities.** Common use areas that do not serve units required to comply with 809.2 through 809.4 shall not be required ...

203.9 Employee Work Areas. Spaces and elements shall only be required to comply with 206.2.8, 207.1 and 215.3 and shall be designed for approach, enter and exit. Other than raised courtroom stations, with areas less than 300 square feet and elevated 7 inches or more shall not be required ...

- **203.10 Raised Refereeing, Judging, and Scoring Areas.** Structures used solely for these sport functions shall not be required to comply ...
- **203.11 Water Slides.** Water slides shall not be required to comply ....
- **203.12 Animal Containment Areas.** These areas that are not for public use shall not be required to comply ...

**203.13 Raised Boxing or Wrestling Rings.** These areas shall not be required to comply ...

**203.14 Raised Diving Boards and Diving Platforms.** These elements shall not be required to comply ...





#### Safe Harbor



Both TDLR and DOJ have "safe harbor" provisions that relate to compliance with the 2010 ADA and 2012 TAS.

#### 106.5.57 Safe Harbor

Elements of a path of travel at a subject building or facility that have been previously constructed or altered in accordance with the April 1, 1994 TAS...

#### 106.5.57 Safe Harbor

...are not required to be retrofitted to reflect the incremental changes in the 2012 TAS solely because of an alteration to a primary function area served by that path of travel.

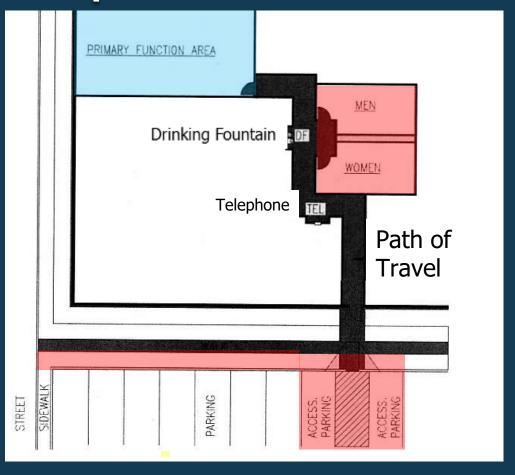
#### **Elements of a Path of Travel**

Based on the definition of "path of travel" (TAS 106.5.41), this includes the following elements:

- Accessible route
- Parking
- Toilet Rooms
- Telephones
- Drinking Fountains



## **Example: Path of Travel**



#### **Example: Safe Harbor**

If the existing sign is in full compliance with mounting location and height requirements of section 4.30.6 of the 1994 TAS and is not altered, the sign would not be required to comply with the location requirements of the 2012 TAS in 703.4.2 based on safe harbor.



#### **Example: Safe Harbor**



2012 TAS: Figure 703.4.1

#### **Example: Safe Harbor**

If the same sign did not comply with the finish and contrast requirements of the 1994 TAS 4.30.5, safe harbor from the 2012 TAS requirements for finish and contrast (703.5.1) would not apply.



#### **Summary**

Safe harbor does not mean that buildings or facilities are "grandfathered."



It only means that existing path of travel elements that are in full compliance with the 1994 TAS are not be required to be brought into compliance with the 2012 TAS until they are altered.

## Technical Memo 2012-05 Safe Harbor



The following climiferations are provided to address variances lessed for projects constrained under the 1994 TAS and their effect on self-barbar:

- 1994 TAS Verbaces. Variances issued by the Department are only applicable to the EASPRI construction project for which they are issued and comes be applied to any other construction project, charding, that not Emissis in, any revision constructed on or after March 15, 2017.
  - In addition, information that an element or apace constructed under the 1994 TAS may have been journel a variance does not recen that the element or opace has been grained and harden.
- Pall Compliance with 1994 TAS. Only electron and spaces in full compliance with the 1984
  TAS was digible for self-harbor. Thus, where no climate or space was constituted, innovated,
  alternative model price to March 13, 2012 but full compliance with the 1994 TAS sear not
  achieved, the electronic or space does not full within the scope of sulf harbor.<sup>44</sup>

\*\*This determination is based on a similar commontary by the U.S. Department of Lustice in the Goldens and Analysis for 18 CFR Plans 16 Nominate assession on the Basis of Disabelley in Tubble Accommodations and Communical Facilities (as mereded by the that note published September 15, 2009). Technical
Memorandum 201205 was issued on
January 22, 2013 to
address safe harbor
and variances.

#### Excerpt from TM 2012-05:

1. 1994 TAS Variances. Variances issued by the Department are applicable only to the EABPRJ construction project for which they are issued and cannot be applied to any other project, including, but not limited to, any project constructed on or after March 15, 2012.

#### Excerpt from TM 2012-05:

**2. Full Compliance with 1994 TAS**. Only elements and spaces in <u>full</u> compliance with the 1994 TAS are eligible for safe harbor.

Thus, where a public accommodation attempted barrier removal but full compliance with the 1994 Standards was not readily achievable; the modified element does not fall with the scope of the safe harbor provision.

This statement is from DOJ's commentary in the Guidance and Analysis for 28 CFR Parts 36 (Title III).

#### Safe harbor does not apply to:

Residential Facilities Dwelling Units	Saunas and Steam Rooms
Amusement Rides	Swimming Pools, Wading Pools, & Spas
Recreational Boating Facilities	Shooting Facilities with Firing Positions
Exercise Machines and Equipment	Team or Player Seating
Fishing Piers and Platforms	Play Areas
Golf Facilities	Bowling Lanes (Routes)
Miniature Golf Facilities	Court Sports (Routes)

## Plan Reviews and Inspections



#### **History: Plan Reviews**

In 1971, the 62nd Legislature added the requirement for <u>plans and specifications</u> to be submitted to the State Building Commission for review and approval prior to bidding and award of construction contracts.

Applied only to buildings and facilities that were constructed or substantially renovated with <u>public funds</u>.

Privately funded buildings added in 1977.

In 1991, the 73rd Legislature required that plans and specifications be submitted for review and inspection when the estimated construction costs are \$50,000 or more.

At that same time (1991), a provision for contracting with municipalities for review and inspection of <u>privately funded</u> buildings and facilities was added.

<u>Publicly funded</u> buildings and facilities were added in 1999.

In 2001, contracting capabilities were limited to state agencies and political subdivisions of the state.

## Verifying Compliance

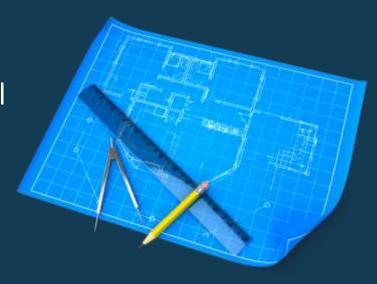
- Building owners have an obligation to comply with both federal and state accessibility Acts and Standards.
- Plan reviews and inspections are not required or performed by DOJ to verify compliance with the 2010 ADA or the ADA.
- TDLR requires plan reviews and inspections for subject buildings and facilities.

## Submission Requirements



# Submission for Review & Approval Required

All plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to the department for review and approval if:



- (1) the building or facility is subject to this chapter
- (2) the estimated construction cost is at least \$50,000.



## Registered Accessibility Specialists (RAS)



#### Certificate of Registration Required

(a) A person may <u>not</u> perform a review or **inspection** function of the commission on behalf of the owner of a building or facility unless the person holds a certificate of registration issued under this subchapter.



(b) This section does not apply to an employee of:

(1) the department; or

(2) an entity\* with which the commission contracts under Section 469.055.

#### TU/.UJJ

# Contract to Perform Review and Inspection

The commission may contract with other state agencies and political subdivisions to perform the commission's review and inspection functions.



\*Currently, there are <u>no</u> other state agencies, cities, or municipalities certified by TDLR as contract providers.

# Administrative Sanctions and Penalties

A person who is not a department (b) employee, registered accessibility specialist or contract provider and performs a plan review or inspection function of the department is subject to administrative penalties in accordance with the Act or Texas Occupations Code, Chapter 51 and Title 16, Texas Administrative Code, Chapter 60.

#### http://www.tdlr.state.tx.us/enforcement.htm



#### Texas Department of Licensing and Regulation

P.O. Box 12157 Austin, Texas 78711 800-803-9202 / TDD: 800-735-2989

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#### Registered Accessibility Specialist Penalties and Sanctions

Registered Accessibility Specialist (EAB)

Texas Government Code, Chapter 469

16 Texas Administration Code, Chapter 68

#### Class A:

1st Violation, Reprimand to \$1,000

2<sup>nd</sup> Violation, \$500 to \$2,000

#### All penalties accessed by TDLR are identified on the TDLR website.

3rd Violation, \$1,000 to \$4,000 per day not corrected and/or 6-month probated suspension to 1-year full suspension.

- Failed to obtain the request for inspection form prior to proceeding with the inspection 68.52(b)
- Failed to provide owner results of inspection in writing 68.52(c)
- Failed to provide the owner a list of deficiencies and a deadline for completing modifications 68.53(a)(1)
- · Faliure to notify the Department of changes to contact information by submitting a Registered Accessibility Specialist Contact Update form within 30 days - 68.75(d)
- · Failure to provide records of plan review, inspection, or related activities to the Department within 14 days of a written request by the Department - 68.93(c)

#### Class B:

1st Violation, \$500 to \$3,000 and/or up to 6-month probated suspension

2<sup>nd</sup> Violation, \$1,500 to \$5,000 plus 1-year probated suspension to 1-year full suspension

3rd Violation, \$3,000 to \$5,000 per day not corrected plus 1-year full suspension to revocation

- Failed to obtain certificate of registration with TDLR prior to performing plan review function 469.201, 68.90(b)
- Failed to obtain certificate of registration with TDLR prior to performing inspection function 469 201, 68 90(b)
- Performing plan review/inspection functions with an expired registration 68.74(c)
- Failure to comply with all procedures of the Department 68.75(c), 68.76(a)
- Stated or implied to a building owner that the Department will approve avariance 68.76(e)(3)
- Submitting or preparing a variance application for a project in which the RAS has provided review or inspection services 68.76(e)(4)

# RAS Application Process and Exam





#### 68.70 RAS

#### **Qualifications for Certification**

(a) An applicant seeking departmental certification as a registered accessibility specialist in order to perform plan review or inspection services shall meet the following minimum qualifications:

(1) Any one of the following:

(A) a degree in architecture, engineering, interior design, landscape architecture, or equivalent, and

a minimum of one year experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent; Or



(B) Eight years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent;

(C) four years experience related to building inspection, building planning, accessibility design or review, accessibility inspection, or equivalent,

#### and

certification as an accessibility inspector/plans examiner granted by a model building code organization

# Accessibility Inspector/Plans Examiner

The International Code Council (ICC) is considered to be a model building code organization and they have an Accessibility Inspector/ Plans Examiner certification.

Information
about the
certification is
provided on the
ICC website:



www.iccsafe.org

## Texas Accessibility Academy

Previously, attendance at the Texas
Accessibility Academy was required to be
eligible to take the RAS exam.



(b) An applicant shall submit a complete application for certification on the **Accessibility Application** form, accompanied by all applicable fees.



#### **Eligibility Postcard**



If the RAS application is approved by the TDLR Licensing Division, an eligibility postcard will be issued.

The postcard contains instructions for scheduling the RAS exam with PSI.

Department of Licensing & Regulation

EXAMINATION ELIGIBILITY

TEXAS DEPARTMENT OF LICENSING AND REGULATION

Fay for and Schedule your examination on line at wave-palename.com.

You are one sligible to take the examination listed directly under the moting address shown below. True eligibility express one year from the date TOLA approved your application.

Inguitate individuality express one year from the date TOLA approved your application.

PSI

DONALD MILLER

123 MAIN STREET

LUBBOCK, TX. 79410

TX DLR IDM 122456

Registered Accessibility Specialist Written Exams and characteristics.

https://candidate.psiexams.com/

(b) An applicant must complete all requirements, including satisfactory completion of an examination, no later than one year after the date the application is filed.

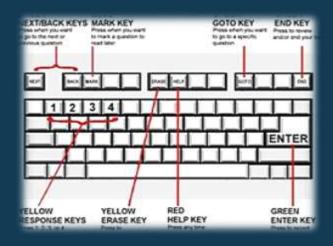
If all requirements are not met within one year, a new application shall be submitted.



#### ✓ RAS Exam - PSI

#### **60 Questions**

5 questions Act - Chapter 469
 5 questions Rules - Administrative Rules
 50 questions 2012 Texas Accessibility Standards



2 hours are allowed. Open book exam.

Minimum passing score: 70%

# RAS Candidate Bulletin TDLR Website

Additional information about the RAS exam and PSI is provided in the which is available on the TDLR website:



www.tdlr.texas.gov/ab/rasexam.htm

(c) Each applicant who satisfies all requirements will be provided a wallet card and a wall certificate.

The wallet card is the actual certificate of registration.



# RAS Registration Renewal



# 68.73 Registration Requirements

### Renewal

(a) A complete application for registration renewal must be submitted on an approved department form with all required fees and must be filed by the expiration date, or the registration will expire.

(b) Non-receipt of a registration renewal notice from the department does not exempt a person from any requirements of this chapter.

#### Rule 68.80 Fees

Registered Accessibility Specialists	
Application for Certificate of Registration	\$300
Registration Renewal	\$250
Examination	<del>\$100</del> *
Wall Certificate Duplicate or	
Replacement	\$25
Wallet Card Duplicate or Replacement	\$25

\*Examination fee is paid directly to PSI per Rule 68.80 recently revised.

(c) A registered accessibility specialist shall not perform work requiring registration under the Act with an expired registration.

(d) A registered accessibility specialist shall not perform work requiring registration under the Act without satisfying the requirements of §68.74 (Continuing Education) prior to renewal.

## RAS Continuing Education Requirements





### **68.74 Continuing Education**

#### Renewal



To renew a certificate of registration, a registered accessibility specialist must complete eight hours of continuing education as provided in this section.

## **68.74 Continuing Education**

#### Renewal



The continuing education hours must include four hours of instruction in courses approved by the department under Chapter 59 of this title in one or more of the following topics:

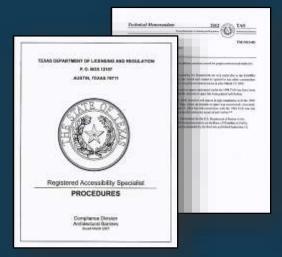
(A) Texas Government Code, Chapter 469, Elimination of Architectural Barriers;

(B) 16 Texas Administrative Code, Chapter 68 Administrative Rules;

(C) Texas Accessibility Standards;

(D) Technical Memoranda as published by the Department; or

(E) Registered Accessibility Specialist Procedures as published by the Department.



(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Government Code, Chapter 469 – Elimination of Architectural Barriers:

(2) 16 Texas Administrative
Code, Chapter 68 –
Administrative Rules;
(3) 2012 Texas Accessibility
Standards;



- (4) Technical Memoranda as published by the Department;
- (5) Registered Accessibility SpecialistProcedures as published by the Department;(6) Other laws and standards:
  - (A) 2010 Standards for Accessible Design or any other <u>accessibility guidelines</u> proposed or adopted by the Access Board or United States Department of Justice;
  - (B) Americans with Disabilities Act;

(C) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities;

(D) Life safety codes; or

(E) Fair Housing Act;



#### 68.74

(7) Business practices;



#### 68.74

(2) The continuing education hours may include up to four hours of instruction in courses that are not approved by the department under Chapter 59 of this title and that are the department under Chapter 59 of this title, subject to the following conditions:

#### 68.74

- (A) The courses must be dedicated to instruction in one or more of the topics listed in subsection (f) (previously discussed);
- (B) The registered accessibility specialist must certify at the time of renewal the number of hours completed under this subsection;

(C) The department has final authority to deny any hours of credit claimed by a registered accessibility specialist under this subsection; and

(D) The credit received under this subsection may not count toward the four hours of instruction required by subsection (b)(1).

(c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal.

For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(d) A registered accessibility specialist may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.

(e) A registered accessibility specialist shall retain a copy of the certificate of completion for a course for three years after the date of completion.



(e), Contd. In conducting any inspection or investigation of the registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.



(g) This section shall apply to providers and courses for registered accessibility specialists upon the effective date of this section.

(h) This section shall apply to certificates of registration, issued under §469.201 of the Act, that expire on or after July 1, 2012.

# Responsibilities of the RAS





# 68.75 Responsibilities of the RAS

(a) Registered accessibility specialists may set and collect fees for services...

...but are responsible for submitting to the department any fees the registered accessibility specialist may receive on behalf of the Department.



#### 68.75 Contd.

(c) Records maintained by registered accessibility specialists, as required by department rules or procedures, are subject to the provisions of the Texas Government Code, Chapter 552, Texas Public Information Act.

(d) Registered accessibility specialists shall comply with all procedures established by the department.

#### 68.75 Contd.

(e) Registered accessibility specialists shall notify the department of changes to contact information by submitting a Registered Accessibility Specialist Contact Update form within thirty (30) calendar days of a change occurring

Or a RAS can now update their information online.

# Standards of Conduct for the RAS

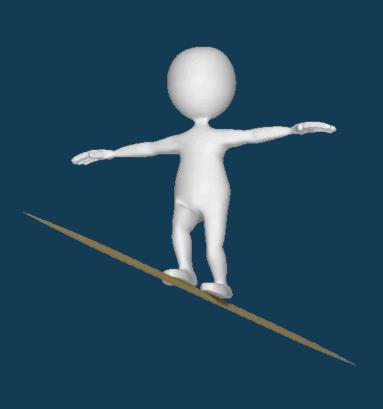


#### RAS

- a) Competency. The registered accessibility specialist shall be knowledgeable of and adhere to:
- the Act,
- the Rules,
- the TAS, Technical Memoranda published by the department, and
- all procedures established by the department.

# (a) Competency, Contd.

It is the obligation of the registered accessibility specialist to exercise reasonable judgment and skill in the performance of plan reviews, inspections, and related activities.

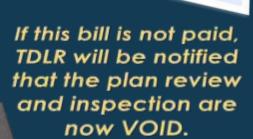


**(b) Integrity.** A registered accessibility specialist shall be honest and trustworthy in the performance of plan review, inspection, and related activities, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission.



(b) Integrity, Contd.

Acts or practices that constitute threats, coercion, or extortion are prohibited.



- (c) Interest. The primary interest of the registered accessibility specialist is to ensure compliance with the Act, the rules, and the TAS.
- The registered accessibility specialist's position, in this respect, should be clear to all parties concerned while conducting plan reviews, inspections, and related activities.

(d) Conflict of Interest. A registered accessibility specialist is obliged to avoid conflicts of interest and the appearance of a conflict of interest.

A conflict of interest exists when a registered accessibility specialist performs or agrees to perform a plan review, inspection, or related activity...

#### (d) Conflict of Interest, Contd.

...for a project in which he/she has a financial interest, whether direct or indirect.



(e) Specific Rules of Conduct. A registered accessibility specialist shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the TAS;

#### (e) Specific Rules of Conduct, Contd.

(2) knowingly furnish inaccurate, deceitful, or misleading information to the department, a building owner, or other person involved in a plan review, inspection, or related activity;



(e) Specific Rules of Conduct, Contd.

(3) state or imply that the department will approve a variance;

#### (e) Specific Rules of Conduct, Contd.

(4) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing a plan review, inspection, or related activity;



(e) Specific Rules of Conduct, Contd.

(5) perform a plan review, inspection, or related activity in a negligent or incompetent manner;



(e) Specific Rules of Conduct, Contd.

(6) perform a plan review, inspection, or related activity on a building or facility in which the registered accessibility specialist



or an employee of a full or partial owner;

(e) Specific Rules of Conduct, Contd.

(9) use the Texas State seal without obtaining the appropriate license in accordance with Texas Business and Commerce Code, Chapter 17, §17.08(c); or



#### (e) Specific Rules of Conduct, Contd.

(10) represent himself or herself as an employee of the department or as a person hired by the department.

OK – Time to go back to reviews and inspections.

# Submission Requirements Plan Reviews



# 469.101 Submission for Review & Approval Required

All plans and specifications for the construction of or for the substantial renovation or modification of a building or facility must be submitted to a RAS or contract provider for review if:

#### 469.101, Cond...

- (1) the building or facility is subject to this chapter; and
- (2) the estimated construction cost is at least \$50,000.

#### 469.101, Cond...

(a) Fees collected by the department will be assessed according to the fee schedule.

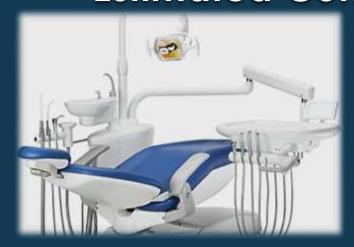
## Rule 68.10 (13), Estimated Cost

# The estimated cost of a project does not include:

- site acquisition,
- architectural, engineering or consulting fees,
- furnishings, or
- equipment that is not part of the building mechanical systems.



# Example: Estimated Construction Cost



...the costs for the electrical and plumbing work necessary to operate the equipment must be included.

The costs for the dental equipment is **not** included, however...



# Submission of Plans & Specifications Responsibilities

- Design Professionals
- Owners
- Building Officials

Each will be discussed separately.

# Submission Responsibilities Design Professional





#### History: Design Professionals

In 1991, the 73rd Legislature placed the responsibility for submitting construction documents on architects, engineers, and building owners.

Interior designers were added to this list in 1993 and landscape architects in 1999.

In 1999, a submission deadline of not later than the 5th day after a design professional affixed the applicable professional seal was added and changed to 20 days in 2009.

# Procedure for Submitting Plans & Specifications

467.IUZ

(a) The architect, interior designer, landscape architect, or engineer who has **overall responsibility** for the design of a constructed or reconstructed building or facility shall submit the plans and specifications required under Section 469.101.

# Rule 68.10 (17) Definitions

Overall Responsibility —The level of responsibility held by an architect, interior designer, landscape architect or engineer who prepares construction documents and coordinates the various aspects of the design of a building or facility.

#### 469.102, Contd.

**(b)** The person shall submit the plans and specifications not later than the <u>20th day</u> after the date the person issues the plans and specifications required under Section 469.101.

### Rule 68.10 (16)

#### **Definitions**

**Issue** --To mail, deliver, transmit, or otherwise release plans or specifications to an owner, lessee, contractor, subcontractor, or any other person acting for an owner or lessee for the purpose of construction, applying for a building permit, or obtaining regulatory approval after such plans have been sealed by an architect, interior designer, landscape architect, or engineer.

#### Rule 68.10 (16), Contd.

In the case of a state-funded or other public works project, it is the time at which plans or specifications are publicly posted for bids, after such plans or specifications have been sealed by an architect, interior designer, landscape architect, or engineer.

#### 469.102(b), Contd.

If plans and specifications are issued on more than one date, the person shall submit the plans and specifications not later than the 20th day after each date the plans and specifications are issued.

In computing time under this subsection, a Saturday, Sunday, or legal holiday is not included.

# Submission of Construction Documents

Note bolocat

(b) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver the construction documents...



#### Rule 68.10 (7)

#### **Definitions**

#### **Construction Documents —**

Documents used for the construction of a building or facility, including working drawings, plans, specifications, addenda, change orders, and other supplemental documents issued for the purpose of construction.



#### Rule 68.50(b), Contd.

...along with a Proof of Submission form to a registered accessibility specialist or a contract provider not later than the 20th day after the plans and specifications are issued.

In computing time under this subsection, a Saturday, Sunday or legal holiday is not included.

#### **Proof of Submission Form**

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The form must be submitted with the plans, therefore, when the plans are submitted to a RAS, the form must also be submitted to the RAS.

RAS are responsible for maintaining the original in the file and transferring a copy to TDLR.

# Failure to Submit Plans and Specifications

The commission shall report to the Texas Board of Architectural Examiners, the Texas Board of Professional Engineers, or another appropriate licensing authority the failure of any architect, interior designer, landscape architect, or engineer to submit or resubmit in a timely manner plans and specifications to the department as required by this subchapter.

# Submission Responsibilities Owner



#### 77th Legislature.....

In 2001, the 77th Legislature prohibited owners from allowing an application for a building permit to be filed or construction to commence before plans and specifications were submitted.

The 2001 Legislative session also required the owner, upon application for a building permit, to submit proof that plans have been submitted.

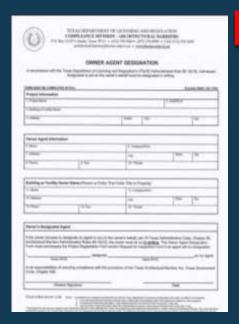


# Rule 68.10 (18) Definitions

Owner -- The person or persons, company, corporation, authority, commission, board, governmental entity, institution, or any other entity that holds title to the subject building or facility.

For purposes under these rules and the Act, an owner may designate an agent.

## Rule 68.10 (11)



### **Definitions**

Designated Agent--An individual designated in writing by the owner to act on the owner's behalf.

#### **IMPORTANT:**

The designation allows the plan review findings and inspection results to be sent to an agent but does

not alleviate the owner from compliance.

# Rule 68.50(c) Submission of Construction Documents

(c) In instances when there is not a design professional with overall responsibility, the owner of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver construction documents to a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.

# Rule 68.10 (4) Definition

Commencement of Construction -- The date of placement of engineering stakes, delivery of lumber or other construction materials to the job site, erection of batter boards, formwork, or other construction related work.



### 469.102(c)

# Procedure for Submitting Plans & Specifications

(c) The owner of the building or facility may not allow an application to be filed with a local governmental entity for a building construction permit related to the plans and specifications or allow construction, renovation, or modification of the building or facility to begin before the date the plans and specifications are submitted to the department.

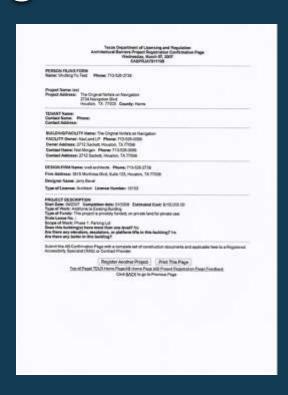
### 469.102(c)

On application to a local governmental entity for a building construction permit, the owner shall submit to the entity proof that the plans and specifications have been submitted to the department under this chapter.



### **Proof for Building Official**

- The proof typically requested by building officials is a copy of the Online Registration form.
- This form is also available after an online registration through the AB Data Search provided on the TDLR website:



#### 469.058 Contd.

(c) Before the commission may impose an administrative penalty for a violation described by Subsection (a), the commission must notify a person responsible for the building and allow the person 90 days to bring the building into compliance.

The commission may extend the 90-day period if circumstances justify the extension.

# Submission Responsibilities

**Building Official** 



## **History:** Building Officials



In 2001, the 77th Legislature prohibited building officials from accepting an application for a building permit unless the official has verified that the project is registered with TDLR.

# 469.102, Contd. Procedure for Submitting Plans & Specifications

(d) A public official of a political subdivision who is legally authorized to issue building construction permits may <u>not</u> accept an application for a building construction permit for a building or facility subject to Section 469.101 unless the official verifies that the building or facility has been **registered** with the department as provided by rule.

# Rule 68.10 (23) Definition

Registered Building or Facility —For the purposes of §469.102 of the Act, a registered building or facility is a construction project that has been assigned a project registration number by the department.

# Plan Review Process



### Rule 68.51, Contd.

(c) Design revisions may be made by submitting to a registered accessibility specialist or a contract provider revised construction documents, change orders, addenda, and letters.

### Rule 68.51 (c), Contd.

- (1) Resubmittals received prior to the recorded estimated completion of construction will be reviewed. The owner and the person making the resubmittal will be advised of the findings.
- (2) Resubmittals received after completion of construction, based on the recorded estimated completion of construction, may not be reviewed but will become a matter of record.

#### 469.103

# Modification of Approved Plans & Specifications

Approved plans and specifications to which any substantial modification is made shall be resubmitted to a RAS or contract provider for review.

# Not Subject or Under \$50,000 Plan Reviews



#### 469.107

Review of Plans and Specifications for Structures Not Subject to Chapter

#### The commission may:

- (1) review plans and specifications and make inspections of a structure not otherwise subject to this chapter; and
- (2) issue a certification that a structure not otherwise subject to this chapter is free of architectural barriers and in compliance with this chapter.

### Rule 68.54 (a)(b)

When construction documents for projects with an estimated construction cost of less than \$50,000 (or projects not subject to 469.003 of the Act) are mailed, shipped, or hand-delivered with an Architectural Barriers Special Registration form to a RAS or contract provider the department...

...along with the applicable fees in §68.80(a)(b), after review, the owner and the person making the submission will be advised in writing of the findings.

### **Special Registration Form**

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The **Special Registration Form** is required since the Online Registration will not accept an estimated construction cost of less than \$50,000.

### Rule 68.54(a)(b), Contd.

The owner shall be advised in writing of the results of each inspection.

#### Under \$50,000 or Not Subject

Projects that are not subject to the Act or have a construction cost of less than \$50,000 are the only projects that are allowed to have only a review or only an inspection.

#### Preliminary Reviews



## Inspection Process



#### History: Inspections



In 1991, the 72nd Legislature added provisions to the Act for inspections and penalties.

# 469.105 Inspection of Building or Facility

(a) The owner of a building or facility described by Section 469.101 is responsible for having the building or facility inspected for compliance with the standards and specifications adopted by the commission under this chapter...

# 469.105, Contd. Inspection of Building or Facility

...<u>not later than the first anniversary</u> of the date the construction or substantial renovation or modification of the building or facility is completed.

#### Rule 68.52 Inspections

(a) The owner of a building or facility subject to §469.101 of the Act shall obtain an inspection from a registered accessibility specialist or a contract provider not later than the first anniversary of the completion of construction.

## Rule 68.10 (6) Definition

Completion of Construction -- The date when a construction project results in occupancy or the issuance of a certificate of occupancy. For public roadway projects, completion of construction occurs upon final payment and release of the contractor performing the work or, if the work is performed by public employees, removal of barricades and opening of all traffic lanes for use.

#### Rule 68.53

### Corrective Modifications Following Inspection

(a) When corrective modifications are required to achieve compliance a registered accessibility specialist or a contract provider shall:

(1) provide the owner a list of deficiencies and a deadline for completing modifications; and...

#### Rule 68.53, Contd.

(2) grant an extension, consistent with established procedures, to perform the necessary corrections.

#### Rule 68.60

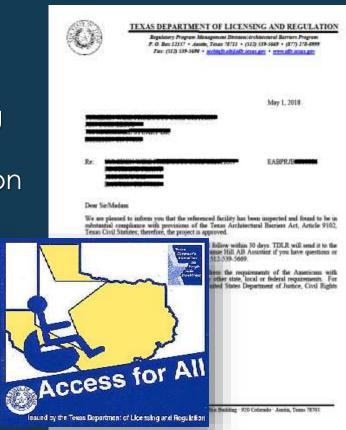
## Notice of Substantial Compliance

The Department shall provide a Notice of Substantial Compliance to the owner, at the owner's request through submission of a Notice of Substantial Compliance Request Form...



#### Rule 68.60, Contd.

...after a newly
constructed building
or facility has had a
satisfactory inspection
or verification of
corrective
modifications has
been submitted.



### Questions



